



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 82

[EPA-HQ-OAR-2021-0253; FRL-8506-03-OAR]

RIN 2060-AV29

### Protection of Stratospheric Ozone: Standards Related to the Manufacture of Class II Ozone-Depleting Substances for Feedstock; Withdrawal of Proposed Rule

**AGENCY:** Environmental Protection Agency (EPA)

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** On September 29, 2021, the U.S. EPA issued a proposed rulemaking to require the control, capture, and/or destruction of a hydrofluorocarbon that would otherwise be emitted from manufacture of hydrochlorofluorocarbons. Specifically, EPA proposed to require companies to control, capture, and/or destroy HFC-23 byproduct generated at plants that manufacture class II ozone-depleting substances regulated under current Clean Air Act regulations, such as HCFC-22. Upon our consideration of comments and based on further action by EPA, EPA is now withdrawing the proposed requirements described in that proposed rule. This document summarizes the proposed rule and provides an explanation for the Agency's decision not to finalize the proposed action.

**DATES:** The U.S. EPA is withdrawing the proposed rule published September 29, 2021 (86 FR 53916), as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** EPA established a docket for this action under Docket ID No. EPA-HQ-OAR-2021-0253. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information may not be publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard-copy form. Publicly available docket materials are available

either electronically through <http://www.regulations.gov>, or in hard copy at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday (except Federal Holidays). The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Docket Center is (202) 566–1742. For further information on the EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** John Feather, U.S. Environmental Protection Agency, Stratospheric Protection Division; telephone number 202-564-1230; or email address: [feather.john@epa.gov](mailto:feather.john@epa.gov). You may also visit our website at <https://www.epa.gov/ozone-layer-protection> for further information.

**SUPPLEMENTARY INFORMATION:** Throughout this document, whenever “we,” “us,” “the Agency,” or “our” is used, we mean EPA. Acronyms that are used in this rulemaking that may be helpful include:

AIM Act	- American Innovation and Manufacturing Act
CAA	- Clean Air Act
CBI	- Confidential Business Information
CFR	- Code of Federal Regulations
EPA	- Environmental Protection Agency
FR	- <i>Federal Register</i>
HCFC	- Hydrochlorofluorocarbon
HFC	- Hydrofluorocarbon
ODS	- Ozone-depleting substances
U.S.C.	- United States Code

#### I. General Information

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### I. General Information

#### *A. Does this action apply to me?*

You may be interested in this action if you manufacture class II ozone-depleting substances (ODS) listed at 40 CFR part 82, subpart A, Appendix B, and hydrofluorocarbon-23 (HFC-23) is also generated as a byproduct at your plant. This action may also be of interest to the public in general.

*B. Why is EPA issuing this withdrawal of the proposed rule?*

This document serves the following purposes:

1. It announces to the public that EPA is withdrawing a proposed rule for which the Agency no longer intends to issue a final rule; and
2. It officially terminates the ongoing rulemaking activity, which allows the Agency to close out the individual rulemaking entry for these actions that appear in EPA's Semiannual Regulatory Agenda.

*C. What is the Agency's authority for this action?*

The proposed action relied on authority provided by several sections of the Clean Air Act (CAA).<sup>1</sup> Section 603 provides authority to establish monitoring and reporting requirements for ODS, and section 605 provides authority to phase out the production and consumption of class II substances, to restrict the use of class II ODS, and to promulgate regulations associated with the production of class II ODS. EPA's regulations implementing the production and consumption controls for class II substances, including provisions implementing exceptions to those controls, can be found at 40 CFR part 82, subpart A.

To the extent the proposal involved recordkeeping and reporting requirements, it also relied on EPA's authority under section 114 of the CAA, which authorizes the EPA Administrator to require recordkeeping and reporting in carrying out any provision of the CAA (with certain exceptions that were not applicable to the proposed rulemaking). Additional authority for electronic reporting comes from the Government Paperwork Elimination Act (44 U.S.C. 3504), which provides "(1) for the option of the electronic maintenance, submission, or

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<sup>1</sup> The Clean Air Act provisions addressing stratospheric ozone protection are codified at 42 U.S.C. 7671-7671q.

disclosure of information, when practicable as a substitute for paper; and (2) for the use and acceptance of electronic signatures, when practicable.”

## **II. Background**

EPA issued a proposed rule under sections 603 and 605 of the CAA, 42 U.S.C. 7671(b) and 7671(d), (86 FR 53916, September 29, 2021) (FRL-8506-01-OAR) to require companies to control, capture, and/or destroy HFC-23 byproduct generated at plants that manufacture class II ODS (*i.e.*, hydrochlorofluorocarbons (HCFCs)) regulated under current CAA regulations.

HFC-23 is a very potent greenhouse gas that is generated as a byproduct during the manufacture of certain HCFCs, including HCFC-22. Under the CAA and the implementing regulations, the production and consumption of HCFCs are restricted with limited exceptions. One such exception is production for use in transformation, or as a feedstock, which is allowed indefinitely. The Agency planned to limit emissions of HFC-23 from plants manufacturing HCFCs. In the proposal that EPA is withdrawing, EPA proposed standards for these emissions under the CAA. Specifically, EPA proposed that no later than October 1, 2022, as compared to the amount of HCFCs intentionally manufactured on a facility line, no more than 0.1 percent of HFC-23 generated on the line may be emitted. Proposed requirements were that HFC-23 byproduct must be captured and employed for a commercial use or destroyed using a technology approved by EPA, thereby ensuring it was not directly emitted. The proposed rule being withdrawn also referenced another proposed rulemaking under authority from the American Innovation and Manufacturing Act of 2020 (AIM Act), and stated in footnote 6, “If that proposed approach under the AIM Act were to be finalized, all generation of HFC-23 would be regulated, including HFC-23 generated as a byproduct during production of HCFCs for feedstock use. Under such a scenario, EPA anticipates that it would not finalize this proposal” (86 FR 53918).

On October 5, 2021, EPA finalized that rule, “Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program under the American Innovation and Manufacturing Act” (HFC Allocation Framework Rule) at 86 FR 55116, which codified

regulatory standards for these HFC-23 byproducts (40 CFR 84.27). This HFC Allocation Framework Rule used EPA's discretion under the AIM Act to restrict the use of allocated allowances for HFC-23 byproducts to those that were consumptive, or to otherwise destroy the HFC-23 byproducts, and disallowed emitting HFC-23 at quantities greater than 0.1 percent of the amount of chemical intentionally produced on a facility line. The finalized HFC Allocation Framework Rule codified regulatory requirements that are duplicative of the proposed requirements included in the proposed rule being withdrawn.

As noted, EPA stated in footnote 6 of the proposal that it anticipated not finalizing this proposed rule if it were to finalize HFC-23 requirements under the referenced AIM Act rulemaking. EPA solicited comment on whether, in such a scenario, "this CAA-specific rulemaking would still be beneficial" (86 FR 53918). One commenter supported not finalizing this CAA-specific rulemaking if the AIM Act HFC-23 requirements were finalized. A separate commenter supported finalizing overlapping requirements due to a perceived benefit in reducing HFC-23 emissions and implementing the requirements but did not provide a supporting rationale. Additional comments on the proposed rule were submitted and are not relevant to the Agency's decision on whether to withdraw this proposed rule.

### **III. How does EPA intend to proceed?**

Given the issuance of the HFC Allocation Framework Rule that codified regulatory standards that are duplicative of the requirements proposed in the proposed rule being withdrawn through this document, EPA has determined that finalizing the proposed rule would be unnecessarily duplicative. We considered comments on this issue to the proposed rule that is being withdrawn, but the one comment in favor of overlapping requirements did not justify that approach. That comment did not change our conclusion that the requirements proposed in the proposed rule being withdrawn are duplicative of what EPA has already established, and thus are not necessary.

For these reasons, EPA is withdrawing the proposed rule that was published on September 29, 2021 (86 FR 53916; FRL-8506-01-OAR).

#### **IV. Impact Analysis**

Because EPA is not promulgating any regulatory requirements, there are no compliance costs or impacts associated with this notice.

#### **V. Statutory and Executive Order Reviews**

This document does not establish new regulatory requirements. Hence, the requirements of other regulatory statutes and Executive Orders that generally apply to rulemakings (*e.g.*, the Unfunded Mandate Reform Act) do not apply.

**Michael S. Regan,**  
Administrator.

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